

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



June 14, 2005

Regulation Package #0803-18

CDSS MANUAL LETTER NO. CCL-05-01

TO: HOLDERS OF THE COMMUNITY CARE LICENSING MANUAL, TITLE 22, DIVISION 6,
CHAPTER 1, GENERAL LICENSING REQUIREMENTS

Regulation Package #0803-18**Effective 6/8/05****Sections 80044, 80045, 80066, and 80070**

This manual letter has been posted on the Office of Regulations Development website at http://www.dss.cahwnet.gov/ord/GeneralLic_630.htm.

These regulations will give licensing staff the express authority to copy client or facility records, and to remove them if necessary for copying. The existing regulations do not consistently permit the copying of client or facility records, which has been a hindrance to the licensing program. For example, one licensee of a facility being investigated refused even to let licensing staff hand-copy portions of facility files because the regulations did not clearly state that licensing staff could copy those files.

These regulations will correct the situations described above. They delineate and amplify the licensing program's authority to inspect, audit, and copy client or facility records upon demand during normal business hours; and to remove them if necessary for copying. At the same time, the regulations contain safeguards that prohibit the removal of emergency or health-related information (unless other copies of those documents are available) and establish standards for the safe removal and timely return of records to facilities. They cut across facility categories and apply to all licensed adult and elderly community care facilities, children's residential community care facilities, and child day care facilities. These regulations will ensure that CDSS has reasonable access to information in order to be able to better evaluate facilities, investigate complaints, and protect the health and safety of clients in care.

These regulations were considered at the Department's public hearing held on June 16, 2004.

FILING INSTRUCTIONS

Revisions to all manuals are shown in graphic screen. The attached pages are to be entered in your copy of the Manual of Policies and Procedures. The latest prior manual letter containing Community Care Licensing changes was Manual Letter No. CCL-04-21. The latest prior manual letter containing General Licensing Requirements regulation changes was Manual Letter No. CCL-04-18.

Page(s)**Replace(s) Page(s)**

1 and 2
79 through 83.1
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Attachments

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80042 REVOCATION OR SUSPENSION OF LICENSE (Continued)**80042**

- (b) Proceedings to hear a revocation action or a revocation and temporary suspension action shall be conducted pursuant to the provisions of Health and Safety Code Section 1551.

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- (1) Health and Safety Code Section 1551 provides in part:

Proceedings for the suspension, revocation, or denial of a license under this chapter shall be conducted in accordance with the provisions of Chapter 5 commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code.

- (2) Chapter 5 commencing with Section 11500 of Part 1, Division 3, Title 2 of the Government Code provides in part:

- (A) When the Director intends to seek revocation of a license, he/she shall notify the licensee of the proposed action; shall concurrently serve the licensee with an accusation; and advise the licensee of the right to a hearing.

- (B) The licensee has the right to a hearing prior to the revocation or suspension of a license, except as provided below:

- (1) The Director may temporarily suspend any license prior to hearing when in his/her opinion such action is necessary to protect the clients in the facility from any physical or mental abuse or any other substantial threat to health or safety.

- (2) When the Director intends to temporarily suspend a license prior to a hearing, he/she shall notify the licensee of the temporary suspension and the effective date thereof, and concurrently serve the licensee with an accusation.

- (C) The licensee shall apply for a hearing under (B) above by sending a written notice of defense to the Director within 15 calendar days of the mailing date of the revocation or suspension notice.

- (D) The Director shall, within 15 days of receipt of the notice of defense, request the Office of Administrative Hearings to set the matter for hearing.

- (c) For a revocation and temporary suspension action, the Director shall request the Office of Administrative Hearings to hold the hearing as soon as possible but not later than 30 calendar days after receipt of the notice of defense.

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80042	REVOCATION OR SUSPENSION OF LICENSE (Continued)	80042
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NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1550, 1550.5, and 1551, Health and Safety Code.

80043	LICENSEE/APPLICANT COMPLAINTS	80043
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- (a) Each licensee/applicant shall have the right, without prejudice, to bring to the attention of the department or the licensing agency, or both, any alleged misapplication or capricious enforcement of regulations by any licensing representative, or any differences in opinion between the licensee and any licensing representative concerning the proper application of these regulations.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

80044	INSPECTION AUTHORITY OF THE LICENSING AGENCY	80044
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- (a) The licensing agency shall have the inspection authority specified in Health and Safety Code Sections 1526.5, 1533, 1534 and 1538.

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- (1) Health and Safety Code Section 1526.5 provides in part:

Within 90 days after the date of issuance of a license or special permit pursuant to Section 1525, the department shall conduct an inspection of the facility for which the license or special permit was issued.

- (2) Health and Safety Code Section 1533 provides in part:

...any duly authorized officer, employee, or agent of the State Department of Social Services may, upon presentation of proper identification, enter and inspect any place providing personal care, supervision, and services at any time, with or without advance notice, to secure compliance with, or to prevent a violation of, any provision of this chapter.

- (3) Health and Safety Code Section 1534 provides in part:

"(a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.

HANDBOOK CONTINUES

80044

INSPECTION AUTHORITY OF THE LICENSING AGENCY
(Continued)

80044

HANDBOOK CONTINUES

- "(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:
- "(i) When a license is on probation.
 - "(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.
 - "(iii) When an accusation against a licensee is pending.
 - "(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.
 - "(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.
- "(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)....
- "(C) Under no circumstance shall the department visit a community care facility less often than once every five years."

(4) Health and Safety Code Section 1538(c) provides in part:

- (c) Upon receipt of a complaint,... the state department shall make a preliminary review and,... it shall make an onsite inspection... within 10 days after receiving the complaint, except where a visit would adversely affect the licensing investigation or the investigation of other agencies.

HANDBOOK ENDS HERE

- (b) The licensing agency shall have the authority to interview clients, including children, or staff members, without prior consent.
- (1) The licensee shall ensure that provisions are made for private interviews with any clients, including children, or any staff members.
- (c) The licensing agency shall have the authority to inspect, audit, and copy client or facility records upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the requirements specified in Sections 80066(c) and 80070(d).

80044 INSPECTION AUTHORITY OF THE LICENSING AGENCY
(Continued)**80044**

- (1) The licensee shall ensure that provisions are made for the examination of all records relating to the operation of the facility.
- (d) The licensing agency shall have the authority to observe the physical condition of the client, including conditions that could indicate abuse, neglect, or inappropriate placement, and to have a licensed medical professional physically examine the client.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1526.5, 1531, 1533, 1534 and 1538, Health and Safety Code.

80045 EVALUATION VISITS**80045**

- (a) Community care facilities shall be evaluated as specified in Health and Safety Code Sections 1534 and 1548.

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- (1) Health and Safety Code Section 1534(a) provides in part:
 - "(a) (1) Every licensed community care facility shall be subject to unannounced visits by the department. The department shall visit these facilities as often as necessary to ensure the quality of care provided.
 - "(A) The department shall conduct an annual unannounced visit to a facility under any of the following circumstances:
 - "(i) When a license is on probation.
 - "(ii) When the terms of agreement in a facility compliance plan require an annual evaluation.
 - "(iii) When an accusation against a licensee is pending.
 - "(iv) When a facility requires an annual visit as a condition of receiving federal financial participation.
 - "(v) In order to verify that a person who has been ordered out of a facility by the department is no longer at the facility.

HANDBOOK CONTINUES

80045 EVALUATION VISITS (Continued)

80045

HANDBOOK CONTINUES

- "(B) The department shall conduct [random] annual unannounced visits to no less than 10 percent of facilities not subject to an evaluation under subparagraph (A)...
- "(C) Under no circumstance shall the department visit a community care facility less often than once every five years.
- "(2) The department shall notify the community care facility in writing of all deficiencies in its compliance with the provisions of this chapter and the rules and regulations adopted pursuant to this chapter, and shall set a reasonable length of time for compliance by the facility.
- "(3) Reports on the results of each inspection, evaluation, or consultation shall be kept on file in the department, and all inspection reports, consultation reports, lists of deficiencies, and plans of correction shall be open to public inspection in the county in which the facility is located."
- (2) Health and Safety Code Section 1548 provides in part:
- "(a) In addition to suspension or revocation of a license issued, ... the department may levy a civil penalty in addition to the penalties of suspension or revocation.
- "(b) The amount of the civil penalty shall not be less than twenty-five dollars (\$25) or more than fifty dollars (\$50) per day for each violation of this chapter except where the nature or seriousness of the violation or the frequency of the violation warrants a higher penalty or an immediate civil penalty assessment, or both, as determined by the department. In no event, shall a civil penalty assessment exceed one hundred fifty dollars (\$150) per day."

HANDBOOK ENDS HERE

- (b) The licensing agency shall have the authority to make any number of other visits to a facility in order to determine compliance with applicable law and regulation.

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- (c) Repealed by Manual Letter No. CCL-91-05, effective 1/20/91.

HANDBOOK ENDS HERE

NOTE: Authority cited: Section 1530 and 1548, Health and Safety Code. Reference: Sections 1533, 1534, 1538 and 1548, Health and Safety Code.

80046 EXCLUSIONS**80046**

- (a) An individual can be prohibited from serving as a member of a board of directors, executive director, or officer; from being employed or allowing an individual in a licensed facility as specified in Health and Safety Code Sections 1558 and 1558.1.

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- (1) Health and Safety Code Section 1558 reads:

"(a) The department may prohibit any person from being a member of the board of directors, an executive director, or an officer of a licensee, or a licensee from employing, or continuing the employment of, or allowing in a licensed facility, or allowing contact with clients of a licensed facility by, any employee, prospective employee, or person who is not a client who has:

"(1) Violated, or aided or permitted the violation by any other person of, any provisions of this chapter or of any rules or regulations promulgated under this chapter.

"(2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the facility, or the people of the State of California.

"(3) Been denied an exemption to work or to be present in a facility, when that person has been convicted of a crime as defined in Section 1522.

"(4) Engaged in any other conduct which would constitute a basis for disciplining a licensee.

"(5) Engaged in acts of financial malfeasance concerning the operation of a facility, including, but not limited to, improper use or embezzlement of client moneys and property or fraudulent appropriation for personal gain of facility moneys and property, or willful or negligent failure to provide services.

"(b) The excluded person, the facility, and the licensee shall be given written notice of the basis of the department's action and of the excluded person's right to an appeal. The notice shall be served either by personal service or by registered mail. Within 15 days after the department serves the notice, the excluded person may file with the department a written appeal of the exclusion order. If the excluded person fails to file a written appeal within the prescribed time, the department's action shall be final.

"(c)(1) The department may require the immediate removal of a member of the board of directors, an executive director, or an officer of a licensee or exclusion of an employee, prospective employee, or person who is not a client from a facility pending a final decision of the matter, when, in the opinion of the director, the action is necessary to protect residents or clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.

HANDBOOK CONTINUES

80065 PERSONNEL REQUIREMENTS (Continued)**80065**

- (k) When regular staff members are absent, there shall be coverage by personnel capable of performing assigned tasks as evidenced by on-the-job performance.
- (l) Personnel shall provide for the care and safety of persons without physical or verbal abuse, exploitation or prejudice.
- (m) All personnel shall be instructed to report observations or evidence of violations of any of the personal rights specified in Section 80072 and/or any of the personal rights provisions of Chapters 2 through 7.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 5453 and 5458, Welfare and Institutions Code; Sections 1501, 1502(a)(7), 1522, 1531 and 1562, Health and Safety Code; and Section 42001, Vehicle Code.

80066 PERSONNEL RECORDS**80066**

- (a) The licensee shall ensure that personnel records are maintained on the licensee, administrator and each employee. Each personnel record shall contain the following information:
 - (1) Employee's full name.
 - (2) Driver's license number if the employee is to transport clients.
 - (3) Date of employment.
 - (4) A statement signed by the employee that he/she is at least 18 years of age.
 - (5) Home address and phone number.
 - (6) Documentation of the educational background, training and/or experience specified in licensing regulations for the type of facility in which the employee works.
 - (7) Past experience, including types of employment and former employers.
 - (8) Duties of the employee.
 - (9) Termination date if no longer employed by the facility.
 - (10) A health screening as specified in Section 80065(g).
 - (11) Tuberculosis test documents as specified in Section 80065(g).
 - (12) For employees that are required to be fingerprinted pursuant to Section 80019:
 - (A) A signed statement regarding their criminal record history as required by Section 80019(d).

80066 PERSONNEL RECORDS (Continued)**80066**

- (B) Documentation of either a criminal record clearance or exemption as required by Section 80019(e).
 - 1. For Certified Administrators, a copy of their current and valid Administrator Certification meets this requirement.
- (b) Personnel records shall be maintained for all volunteers and shall contain the following:
 - (1) A health statement as specified in Section 80065(g)(3).
 - (2) Tuberculosis test documents as specified in Section 80065(g).
 - (3) For volunteers that are required to be fingerprinted pursuant to Section 80019:
 - (A) A signed statement regarding their criminal record history as required by Section 80019(d).
 - (B) Documentation of either a criminal record clearance or exemption as required by Section 80019(e).
- (c) All personnel records shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. removal of records shall be subject to the following requirements:
 - (1) Licensing representatives shall not remove any current emergency and health-related information for current personnel unless the same information is otherwise readily available in another document or format.
 - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.
 - (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.
- (d) All personnel records shall be retained for at least three years following termination of employment.
- (e) All personnel records shall be maintained at the facility site.
 - (1) The licensee shall be permitted to retain such records in a central administrative location provided that they are readily available to the licensing agency at the facility site as specified in Section 80066(c).
- (f) In all cases, personnel records shall document the hours actually worked.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501 and 1531, Health and Safety Code.

80070 CLIENT RECORDS**80070**

- (a) The licensee shall ensure that a separate, complete, and current record is maintained in the facility for each client.
- (b) Each record must contain information including, but not limited to, the following:
 - (1) Name of client.
 - (2) Birthdate.
 - (3) Sex.
 - (4) Date of admission.
 - (5) Names, addresses, and telephone numbers of the authorized representative.
 - (6) A signed copy of the admission agreement specified in Section 80068.
 - (7) Name, address and telephone number of physician and dentist, and other medical and mental health providers, if any.
 - (8) Medical assessment, including ambulatory status, as specified in Section 80069.
 - (9) Record of any illness or injury requiring treatment by a physician or dentist and for which the facility provided assistance to the client in meeting his/her necessary medical and dental needs.
 - (10) Record of current medications, including the name of the prescribing physician, and instructions, if any, regarding control and custody of medications.
 - (11) Restricted Health Condition Care Plan, if required for the client by Section 80092.2.
 - (12) Functional assessment as specified in Section 80069.2.
 - (13) Mental health assessment specified in Section 80069.3.
 - (14) Date of termination of services.
 - (15) An account of the client's cash resources, personal property, and valuables entrusted as specified in Section 80026.
- (c) All information and records obtained from or regarding clients shall be confidential.
 - (1) The licensee shall be responsible for safeguarding the confidentiality of record contents.
 - (2) Except as specified in (d) below, or as otherwise authorized by law, the licensee and all employees shall not reveal or make available confidential information.

80070 CLIENT RECORDS (Continued)**80070**

- (d) All client records shall be available to the licensing agency to inspect, audit, and copy upon demand during normal business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following requirements:
- (1) Licensing representatives shall not remove the following current records for current clients unless the same information is otherwise readily available in another document or format:
 - (A) Name, address, and telephone number of the authorized representative(s) as specified in Section 80070(b)(5).
 - (B) Name, address, and telephone number of a client's physician and dentist, and any other medical and mental health providers, as specified in Section 80070(b)(7).
 - (C) Medical assessment, including ambulatory status, as specified in Section 80070(b)(8).
 - (D) Record of any current illness or injury as specified in Section 80070(b)(9).
 - (E) Record of current medications as specified in Section 80070(b)(10).
 - (F) Restricted Health Condition Care Plan as specified in Section 80070(b)(11).
 - (G) Functional assessment as specified in Section 80070(b)(12).
 - (H) Mental health assessment as specified in Section 80070(b)(13).
 - (I) Any other records containing current emergency or health-related information for current clients.
 - (2) Prior to removing any records, a licensing representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the administrator or designee.
 - (3) Licensing representatives shall return the records undamaged and in good order within three business days following the date the records were removed.
- (e) A client's records shall be open to inspection by the client's authorized representative(s), if any.
- (f) The information specified in (b)(1)-(b)(15) above must be updated as necessary to ensure the accuracy of the client's record.
- (g) Original client records or photographic reproductions shall be retained for at least three years following termination of service to the client.

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1501, 1507, and 1531, Health and Safety Code.

80071 REGISTER OF CLIENTS**80071**

(a) In all licensed facilities, the following shall apply:

- (1) The licensee shall maintain in the facility a register of all clients. The register shall be immediately available to, and copied for, licensing staff upon request; and must contain current information on the following:
 - (A) Client's name and ambulatory status as specified in Section 80070(b)(1) and (8).
 - (B) Name, address and telephone number of client's attending physician.
 - (C) Authorized representative information as specified in Section 80070(b)(5).
 - (D) Client's restricted health condition(s) specified in Section 80092(b).
 1. The licensee may keep a separate client register with this information.
- (2) The licensee shall keep the register in a central location at the facility.
 - (A) Registers are confidential, as specified in Section 80070(c).

NOTE: Authority cited: Section 1530, Health and Safety Code. Reference: Sections 1507 and 1557.5, Health and Safety Code.

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